



U.S. Copyright Office

37 CFR Part 201

[Docket No. 2020-11]

Exemptions to Permit Circumvention of Access Controls on Copyrighted Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The United States Copyright Office will be holding public hearings as part of the eighth triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”) concerning possible exemptions to the DMCA’s prohibition against circumvention of technological measures that control access to copyrighted works. Parties interested in testifying at the hearings are invited to submit requests to testify pursuant to the instructions set forth below.

DATES: The public hearings are scheduled for April 5–8 and April 19–22, 2021.

Requests to testify must be received no later than 11:59 p.m. Eastern time on February 24, 2021. Once the hearing agendas are finalized, the Office will notify all participants and post the times and dates of the hearings at <https://www.copyright.gov/1201/2021/>.

ADDRESSES: The Office will conduct the hearings remotely using the Zoom videoconferencing platform. Requests to testify should be submitted through the request form available at <https://www.copyright.gov/1201/2021/hearing-request.html>.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov; Kevin R. Amer, Deputy General Counsel, by email at kamer@copyright.gov; or Anna Chauvet, Associate General Counsel, by email at achau@copyright.gov. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: On June 22, 2020, the Copyright Office (“Office”) published a notice of inquiry in the Federal Register to initiate the eighth triennial rulemaking proceeding under 17 U.S.C. 1201(a)(1), which authorizes the Librarian of Congress, upon the recommendation of the Register of Copyrights, to exempt certain classes of copyrighted works from the prohibition against circumventing a technological measure that controls access to a copyrighted work.¹ On October 15, 2020, the Office published a notice of proposed rulemaking setting forth proposed exemptions for seventeen classes of works and requesting written comments.² The responsive comments received thus far have been posted on the Office’s website at <https://www.copyright.gov/1201/2021/>.

At this time, the Office is announcing public hearings to be held via Zoom to further consider the proposed exemptions. The Office plans to convene panels of witnesses for the proposals to be considered, and may combine certain panels if the witnesses and/or key issues substantially overlap. All of the hearings will be live streamed online, and the video and transcript for each hearing will be posted on the Office’s website. If no request to testify is received for a proposed exemption, the Office will consider the class based on the written submissions and any *ex parte* communications with interested parties (discussed below).

A. Submitting Requests to Testify

A request to testify should be submitted to the Office using the form on the Office’s website indicated in the **ADDRESSES** section above. Anyone wishing to testify with respect to more than one proposed class must submit a separate form for each request. To the extent feasible, the Office requests that organizations submit only one panelist request per proposed class, and generally encourages parties with similar

¹ 85 FR 37399 (June 22, 2020).

² 85 FR 65293 (Oct. 15, 2020).

interests to select a common representative to testify on their behalf. If multiple persons from the same organization wish to testify regarding *different* proposed exemptions, each should submit a separate request outlining the subject matter area. If multiple persons from the same organization wish to testify regarding the *same* proposed exemption, each should again submit a separate request, and explain in their submissions the need for multiple witnesses. For parties represented by law school clinics, the Office will attempt to accommodate requests to allow students to participate under the supervision of a faculty member. The Office will contact requesters should it determine that a hearing for a particular class is unnecessary.

Depending upon the number and nature of the requests, and in light of the limited time available for the public hearings, the Office may not be able to accommodate all requests to testify. The Office will give preference to those who have provided substantive evidentiary submissions in support of or in opposition to a proposal.

All requests to testify must clearly identify:

- The name of the person desiring to serve as a witness;
- The organization or organizations represented, if any;
- Contact information;
- The proposed class about which the person wishes to testify;
- A two- to three-sentence summary of the testimony the witness expects to present; and
- If the party is requesting the ability to demonstrate a use or a technology during the hearing, a description of the demonstration, the approximate time required, and any functionality required to make the demonstration viewable via Zoom. In light of the transition to virtual hearings for this proceeding, the Office cannot guarantee that witnesses will have the ability to introduce demonstrative evidence into the record during the

hearings. The Office will consider options to accommodate such requests, including potentially by holding one or more dedicated panel sessions for that purpose.

To facilitate the process of scheduling panels, it is essential that all of this information be included in a request to testify.

Following receipt of the requests to testify, the Office will prepare agendas listing the witnesses, dates, and times for each hearing. These will be circulated to witnesses and posted at <https://www.copyright.gov/1201/2021/> on or about March 8, 2021.

B. Format of Public Hearings

The Office will establish time limits for each panel after receiving all requests to testify. Generally, the Office plans to allot approximately one to two hours for each proposed class, although it may adjust the timing depending upon the complexity of the class. In addition, members of the public will be provided a limited opportunity to offer additional comments for the record, but parties who wish to provide detailed information to the Office are encouraged to submit a request to testify.

Witnesses should expect the Office to have carefully studied all written comments, and the Office will expect witnesses to have done the same with respect to the classes for which they will be presenting. The hearings will focus on legal or factual issues that are unclear or underdeveloped in the written record, as identified by the Office, as well as demonstrative evidence.

The Office stresses that factual information is critical to the rulemaking process, and witnesses should be prepared to discuss, among other things, where the copies of the works sought to be accessed are stored, how the works would be accessed, and what would be done with the works after being accessed. The Office also encourages witnesses to provide real-world examples to support their arguments. In some cases, the best way to do this may be to provide a description or demonstration of a claimed noninfringing use

or the technologies pertinent to a proposal. As noted above, a person wishing to provide a demonstration should include a request to do so with the request to testify, using the appropriate space on the form. Persons should consider whether a demonstration is able to be presented in a format that enables it to be viewed by participants and observers via Zoom. To ensure proper documentation of the hearings, the Office will require that a copy of any audio, visual, or audiovisual materials (*e.g.*, slideshows and videos) be provided to the Office following the hearing. The Office may contact witnesses individually ahead of time to ensure that demonstrations can be preserved for the record in an appropriate form.

C. Ex Parte Communication

During the seventh triennial rulemaking, the Office issued guidelines according to which interested parties could request informal meetings with the Office. The Office intends to issue similar guidelines in this proceeding. Consistent with its prior practice, the Office will establish requirements to ensure transparency, including that participating parties submit a list of attendees and a written summary of any oral communications, which will be posted on the Office's website. The *ex parte* guidelines will be made available at <https://www.copyright.gov/1201/2021/> following the completion of the public hearings. No *ex parte* meetings in this proceeding will be scheduled before that time.

As in prior proceedings, such informal communications may supplement, but not substitute for, the written record and testimony at the public hearings. The primary means to communicate views in the course of the rulemaking will continue to be through the submission of written comments and testimony at the public hearings.

Dated: February 2, 2021

Regan A. Smith,
General Counsel and
Associate Register of Copyrights

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